

Michael S. Stamer (MS-4900)
 Philip C. Dublin (PD-4919)
 Fred S. Hodara (FH-7947)
 AKIN GUMP STRAUSS HAUER & FELD LLP
 590 Madison Avenue
 New York, New York 10022-2524
 (212) 872-1000 (Telephone)
 (212) 872-1002 (Facsimile)

Counsel to the Official Committee of Unsecured
 Creditors of Calpine Corporation, et al.

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
CALPINE CORPORATION, <u>et al.</u> ,	: Case No. 05-60200 (BRL)
	: :
Debtors.	: (Jointly Administered)
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**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL
 AND STATEMENT OF ISSUES TO BE PRESENTED**

The Official Committee of Unsecured Creditors (the “Creditors Committee”) of Calpine Corporation, et al. (the “Debtors”) submits, pursuant to Federal Rule of Bankruptcy Procedure 8006, its (1) designation of items to be included in the record on appeal and (2) statement of issues to be presented on appeal to the United States District Court for the Southern District of New York of the following Orders of this Court:

Memorandum Decision and Order Granting, in part, Debtors’ Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors’ Limited Objection to Claims; and (III) Determining Value of Secured Claims, entered March 5, 2007 (Docket No. 3875); and

Amended Order (I) Granting Debtors’ Limited Objection to Claim Numbers 2664, 3275, 3393 Through 3421 (Inclusive), 3546 through 3554 (inclusive), 3586 through 3588 (inclusive), 3731, 4073, 5653 through 5730 (inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of

Bankruptcy Procedure, and (III) Authorizing Repayment of CalGen Secured Debt, entered March 26, 2007 (Docket No. 4120).

Designation of Record Items

The Creditors Committee adopts the Designation of Record Items being filed today by Debtors.

Statement of Issues To Be Presented on Appeal

1. Whether the Bankruptcy Court erred by holding that the Debtors' repayment of prepetition debt to the CalGen Lenders constituted a breach of the Debtors' loans and indentures, and awarding damages for this purported breach, despite having correctly held that (a) the relevant "no-call" provisions that forbid repayment are not even enforceable in bankruptcy, and (b) the debt had been accelerated and matured upon bankruptcy by the terms of the loans and indentures and by operation of the Bankruptcy Code.
2. Whether the Bankruptcy Court erred in concluding that there was "an expectation of an uninterrupted payment stream" by the CalGen Lenders following the commencement of a bankruptcy proceeding, where the Court concluded correctly that the commencement of the bankruptcy proceeding had caused the debt to be matured and accelerated and where the Court concluded that the governing documents did not contain the language of "modern indentures" providing "for prepayment provisions or penalties even during a no-call period or if the facility is accelerated."

Dated: New York, New York
March 30, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Michael S. Stamer
Michael S. Stamer (MS-4900)
Philip C. Dublin (PD-4919)
Fred S. Hodara (FH-7947)
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